Supreme Court, U.S.
FILED
OCT 2 2 2008
OFFICE OF THE CLERK

109 (3)

NO. 08-243

IN THE
Supreme Court of the United States

DEBRA L. THOMAS

Petitioner,

v.

EVANSVILLE VANDERBURGH SCHOOL CORPORTATION, BOARD OF SCHOOL TRUSTEES OF THE EVANSVILLE – VANDERBURGH SCHOOL CORPORATION, PAT LOGE, SALLY KIVETT, JAMES TRADER, THOMAS HIGGS AND SHARON TURPIN,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court judge erred under Rule 59 (e), that authorizes relief when party clearly establish (es) either manifest error of law or fact or 'present (s) newly discovered evidence. See Souter v. International Union, 993 F .2d 495, 599 (7th Cir. 1993) (quoting Federal Deposit Ins. Corp. v. Meyer, 781 F .2d 1256, 1268 (7th Cir. 1986).

2. Whether Court of Appeals erred for denying Petitioner's motion for Rehearing and Rehearing En Banc, when Petitioner provided evidence of record that the District Court received and filed stamped Petitioner's eighteen supplemental pages of genuine issues of material fact to survive summary judgment on August 16, 2004.

3. Whether the Court of Appeals erred for not remanding Petitioner's case back in District Court with instruction when the Court of Appeals has stated that "The Court of Appeals has explained that there are only three valid grounds for a Rule 59 (e) motion-newly discovered evidence, an intervening change on the law, and manifest error of law. See Cosgrove v. Bartolotta, 150 F .3d 729, 732 (7th Cir. 1998).

4. Whether the Court of Appeals overlooked the District Court manifest error when the court misapprehended the Petitioner's claims, and

misapplied the law to Petitioner's claims in light of the pertinent law.

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REPLY TO BRIEF IN OPPOSITION

Pursuant to Supreme Court Rule 15.6, petitioner addresses the following new points raised in the Brief in Opposition.

1. The District Court manifest error deserves attention of this court to review and grant Petitioner's Writ Certiorari grounds under Rule 59 (e). (See record Document No. 150, 156).

REPLY TO COUNTERSTATEMENT

Petitioner's complaint is against the Respondents' in their individual capacities while acting under color of law for falsifying ten handwritten Evansville Vanderburgh School Corporation child abuse and neglect form (DOSS-509), and had forwarded the falsified ten child abuse report to the Child Protection Services that had Petitioner investigated under false pretense by the Child Protection and the Evansville Police Department.

This first issue should be an important interest to this Court. On November 04, 2004, the District Court Judge should have not granted the Respondents' their motion for summary due to the fact that the District Court committed a manifest error under Rule 59 (e). By misapprehended Petitioner's eighteen additional supplemental pages of genuine issue of material fact to survive summary judgment that was filed stamped by the Court on August 16, 2004, but was not applied to Record of Document. Respondents on September 24, 2004, filed their motion for the Court for Order

regarding supplemental filed by Plaintiff. (See Record of Document No. 150).

This second issue should also be an important interest of the Court. The Respondents states that Ms. Thomas claim failed because she failed to present evidence that the Defendants' conduct toward her had a discriminatory purpose or effect. First, Petitioner claim is against the Respondents under 42 USC 1983 Civil Rights for reporting their child fabricating ten handwritten child reports to the Child Protection Services that had Petitioner investigated by the Child Protection Services and the Evansville Police Department. (See Record of Document No. 141). Second, Petitioner claim failed because the District Court filed stamped Petitioner's eighteen pages of genuine material of fact to survive summary judgment but Petitioner's motion providing eighteen pages of factual material evidence was kept off record of document number by the Court.

The third issue should be a interest to this court. On March 03, 2005, Petitioner filed her notice of Appeal. (See Record of Document No. 172). On September 18, 2006, the Court of Appeals Dismissed Petitioners' Appeal for lack of jurisdiction. (See Record of Document No. 183). The Court of Appeals ORDER on August 23, 2006, states that Generally, an appeal may not be taken in a civil case until a final judgment disposing of all claims against all parties is entered on the district court's civil docket pursuant to Fed. R. Civ. P. 58. See Cleaver v. Elias, 852 F .2d 266 (7th Cir. 1988). Also stating that in the present case, the district court had not disposed of defendants' counterclaim at the time appellant filed her appeal,

and defendants-appellees were unwilling to unconditionally dismiss their counterclaim. ((See Record of Document No. 184,185,186,187,188,189,190,191).

The Fourth issue should be an important matter of this court regarding the Order of the Court of Appeals for denying Petitioner for hearing and Rehearing En Banc. Pursuant to Federal Rules of Civil Procedure Rule 59(e) "authorizes relief when a moving party clearly establishes either a manifest error of law or fact or presents newly discovered evidence. See Souter v. International Union, 993 F .2d 1260, 1268 (7th Cir. 1993). (quoting Federal Deposit. The Court of Appeals has explained that there are only three grounds for a Rule 59(e) motion—newly discovered evidence, an intervening change in the law, and manifest error in law. (See Cosgrove v. Bartolotta, 150 F .3d 729, 732 (7th Cir. 1998).

REPLY TO STATEMENT OF FACTS

Respondent's Sally Kivett, Pat Loge, Jim Trader, Thomas Higgs, Evansville Vanderburgh School Corporation and the Evansville Vanderburgh Board of Trustees, are in their individual capacities while acting under color of state law falsified ten child abuse reports to the Child Protection Services that had Petitioner investigated by third parties the Child Protection Services and the Evansville Police Department. The government did not give Local Government Respondents in their individual capacities while acting under color of law power or authority to violate Petitioner's Federal Protect rights while acting under color of law. The Evansville Vanderburgh Board of Trustees the final policy

making adopted two policies. (1) Procedure to be followed in dealing with alleged sexual abuse, child abuse and child neglect. (2) Special Concerns Counselor Duties and Responsibilities. Both of the adopted policy was violated by the Respondents in their individual capacity while acting under color of law. The Board of Trustees final policy making had knowledge that the Respondents in their individual capacities while acting under color of law had stepped beyond their boundaries allowing Respondents' Pat Loge, Sally Kivett, Jim Trade, Thomas Higgs, and Sharon Turpin to deprive Petitioner of the 42 1983 Civil Rights by fabricating with knowledge ten child abuse report that had Petitioner investigated by third parties the Child Protection Services and the Evansville Police Department. Also, is liable for Respondent Sally Kivett Special Concern Counselor in her individual capacity while acting under color of law for interfering with Petitioner's parental rights to her child. (Marteisha Mosley), taking Petitioner's daughter out of class for three years every Tuesday and sometimes on Thursday without Petitioner's knowledge or consent that has violated Petitioner's Constitution Rights. (1). Petitioner's Fourth and Fifth Due Process Clause was violated that heightened protection against government interference with certain fundamental rights and liberty interest. (2). Petitioner's Fourteenth Amendment was violated by the Respondents in their individual capacities while acting under color of law for fabricating ten child abuse reports to the Child Protection Services that had Petitioner investigated by the Child Protection Services and the Evansville Police Department. The Petitioner Fourteenth Amendment was deprived by Respondents that

deprived Petitioner her right equal protection right that no State shall "deprive any person of life, liberty, or property without due process of law.

The Federal Law states that Local Governments, municipal corporation, and school boards are "person: subject to liability under 42 USC 1983 for violating another person's federally protected rights, and thus are not wholly immune from suit under 1983-statue covering legal as well as natural person; as persons; local governing bodies can be sued directly under 1983 for monetary, declaratory, or injunctive relief where the action that is allege to be unconstitutional implements or executed policy statement, ordinance, regulation or decision officially adopted and promulgated by that bodies officers; local government officials sued in their official capacities, are "persons" under 42 USC 1983-which imposed civil liability on any person who deprives another of his federally protected rights-in those cased in which local government would be suable in its own name. (See Monell v. Department of Social Services (1978) 436 US 658, 56 L Ed 2d 611, 98 S Ct 2018, 17 BNA FEP Cas 873, 16 CCH EPD 8345. Action for money damages under 42 USCS 1983 would lie against individual members of school board. (See Endiott v. Van Petten (1971, DC Kan) 330 F Supp 878.

REASON TO GRANT PETITIONER'S WRIT CERTIORARI

The District Court manifest error is grounds under 59 (e), to grant Petitioner's Writ Certiorari, and because Respondents' violated Petitioner's Constitution rights.

REPLY TO FEDERAL CLAIMS

The Respondents in their individual capacities while acting under color of law deprived Petitioner of her Fifth and Fourteenth Due Process Clause Amendment Constitution of the United States had reported with knowledge over ten child abuse reports against Petitioner that had Petitioner investigated by third Parties the Child Protection Services and the Evansville Police Department. By Law, the Child Protection Services had to investigate the report by the school whether it's frivolous or not. The Respondents fabricated child abuse report to the Child Protection Services has assassinated Petitioner Character, that has deprived Petitioner of her right to own and operate her own business called "Home Away from Home to rescue under privilege children. Respondents in their individual capacities while acting under color of law fabricated child abuse reports to the Child Protection that has damaged Petitioner's reputation that Petitioner will never be able to get her license to operated her own business with working with children. The Respondents willful acts of assassinating Petition character is a injury sustained under 1983.

The Fourteenth Amendment to the United States Constitution provides that no state deprive any person of life, liberty, or property without due process law. The Supreme Court has long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more that fair process." Troxel v. Granville, 530 U.S. 57, 65 (2000) (citing Washington, 521 U.S. at 720 see also Reno v. Flores, 507 U.S. 291, 301-302 (1993). More recently

Supreme Court has recognized the fundamental right of parents to make their decisions concerning the care, custody, and control of their children. Stanley v. Illinois, 405 U.S. 645, 651 (1972).

REPLY TO DEFENDANTS ARE ENTITLED TO QUALIFED IMMUNITY FROM LIABILITY

The government did not give the Local Government Respondents in their individual capacities while acting under color of law Local authority or power to deprive Petitioner of her 42 U.S.C.S. 1983 Civil Rights and violate Petitioner's Fourth Fifth Due Process Clause.

CONCLUSION

For the reasons set forth above, the Petition Writ of Certiorari should be granted.

Respectfully Submitted,

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